

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, June 3, 2021
Place: Department A – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [21-10303](#)-A-13 **IN RE: JAMES THOMAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-14-2021 [\[22\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-1] below, therefore this order to show cause will be dropped as moot.

2. [21-10303](#)-A-13 **IN RE: JAMES THOMAS**
[MHM-1](#)

MOTION TO DISMISS CASE
5-6-2021 [\[18\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue the order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). The debtor is delinquent in the amount of

\$640.00. Doc. #20. Before this hearing, another payment in that same amount will also come due. Id. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

Accordingly, this motion will be GRANTED. The case will be dismissed.

3. [21-10716](#)-A-13 **IN RE: VINOD SAHNI**
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
5-4-2021 [\[16\]](#)

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtors filed their chapter 13 plan ("Plan") on March 26, 2021. Doc. #4. Wells Fargo Bank, N.A. ("Creditor") objects to confirmation of the Plan on the grounds that the Plan does not provide for the curing of the \$82,618.65 default on Creditor's claim and the Plan improperly classifies Creditor in Class 4. Doc. #16.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on April 8, 2021. Claim 2.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #4. The Plan lists Creditor's claim in Class 4 which is reserved for non-defaulted claims. Creditor's proof of claim

asserts a pre-petition default of \$82,618.65. The Plan fails to account for or properly classify Creditor's claim. Claim 2; Doc. #4.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

4. [16-12618](#)-A-13 **IN RE: PAUL/JACKIE PENA**
[PK-3](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
5-13-2021 [[94](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Patrick Kavanagh ("Movant"), counsel for the Chapter 13 debtor, requests allowance of final compensation for services rendered from February 21, 2017 through the closing of the bankruptcy case. Doc. #94. During the relevant period, Movant billed \$3,390.00 but requests only \$3,000 in compensation and is not requesting reimbursement for expenses. Doc. #94. The court allowed interim compensation of \$6,000 on March 10, 2017, of which \$4,500 was to be paid through the plan. Order, Doc. #67. The plan provided for \$7,500 in debtor's attorney's fees to be paid through the plan. Plan, Doc. #81.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a Chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant's services in the relevant period included, without limitation: (1) preparing and confirming a modified plan; (2) preparing and filing amended schedules, and forms; and (3) case administration. Doc. #96. The debtor's confirmed plan provides for \$7,500 in attorney fees to be paid through the plan, subject to prior court approval. Plan, Doc. #81. The amount requested by Movant is appropriate under the debtor's confirmed plan. The court finds that compensation of \$3,000.00 is reasonable, actual, and necessary, and the court will approve the motion on that basis.

This motion is GRANTED. The court allows final compensation in the amount of \$3,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

5. [21-10222](#)-A-13 **IN RE: DANNY/ROBIN MARSHALL**
[DMG-1](#)

MOTION TO CONFIRM PLAN
4-22-2021 [\[62\]](#)

ROBIN MARSHALL/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to a date to be determined at the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). On May 12, 2021, the chapter 13 trustee filed an objection to the debtors' motion to confirm the chapter 13 plan. Doc. #73. Creditor Mechanics Bank filed an objection to plan confirmation on May 6, 2021. Doc. #67. On May 27, 2021, the debtors filed a written reply. Doc. #75. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled.

Danny Wayne Marshall and Robin Lynn Marshall (together, "Debtors") filed their First Amended Chapter 13 Plan (the "Plan") on April 22, 2021. Doc. #65. Mechanics Bank, successor by merger to Rabobank, N.A. ("Creditor"), and Michael Meyer, chapter 13 trustee ("Trustee"), object to confirmation of the Plan. Creditor's Obj., Doc. #67; Tr.'s Obj., Doc. #73. Debtors responded to Creditor's and Trustee's objections in a consolidated reply filed on May 27, 2021. Doc. #75.

Creditor objects to confirmation of the Plan on the grounds that: (1) Debtors did not file or propose the Plan in compliance with the good faith requirements of 11 U.S.C. § 1325(a)(3) and (a)(7); (2) the Plan imposes an unreasonable delay that is prejudicial to creditors and violates the requirements of 11 U.S.C. § 1325(a)(1) and § 1307(c); (3) Debtors will be unable to make all payments and comply with the Plan as required under 11 U.S.C. § 1325(a)(6); and (4) the projected disposable income calculated in Debtors' Form 122C does not conform with the requirements of 11 U.S.C. § 1325(b)(1)(B) and § 1325(b)(3). Creditor's Obj., Doc. #67.

Trustee objects to confirmation of the Plan on the grounds that: (1) Debtors will be unable to make all payments and comply with the Plan as required under 11 U.S.C. § 1325(a)(6); (2) the projected disposable income calculated in Debtors' Form 122C does not conform with the requirements of 11 U.S.C.

§ 1325(b); and (3) Debtors failed to file, serve, and set for hearing a motion to value collateral as required by LBR 3015-1(i). Tr.'s Obj., Doc. #73.

Debtors' response to Creditor's and Trustee's objections addresses:

- (1) Creditor's opposition under 11 U.S.C. § 1325(a)(3) and (a)(7);
 - (2) Creditor's opposition under 11 U.S.C. § 1325(a)(1) and § 1307(c);
 - (3) Creditor's and Trustee's opposition under 11 U.S.C. § 1325(a)(6); and
 - (4) Creditor's and Trustee's opposition under 11 U.S.C. § 1325(b). Doc. #75.
- Debtors' response does not address Trustee's opposition made pursuant to LBR 3015-1(i). Id.

Based on the pleadings filed by the parties, the court is inclined to continue the hearing on this motion so that: (1) a motion to value certain collateral may be filed, served and determined prior to or in conjunction with confirmation of the Plan; (2) amended Form 122-C may be filed; and (3) an evidentiary hearing may be held regarding the feasibility of the future refinancing and Debtors' good faith.

MOTION TO VALUE COLLATERAL

LBR 3015-1(i) requires Debtors to file, serve, and set for hearing a valuation motion if a proposed plan will reduce or eliminate a secured claim based on the value of its collateral. LBR 3015-1(i). The hearing must be concluded before or in conjunction with the confirmation of the plan. Id. Here, Ally Bank, a creditor in this matter, filed a proof of claim for the secured amount of \$11,280.25. Claim #2. The Plan reduces Ally Bank's claim based on the reduced value of its collateral to \$10,300. Doc. #65. Thus, Debtors must file, serve, and set for hearing a valuation motion pursuant to LBR 3015-1(i) before the Plan can be confirmed.

While this defect does not render the Plan unconfirmable, it does preclude confirmation of the Plan at this time. Debtors' motion to confirm the Plan will be continued to allow time for Debtors to file, serve, and set for hearing a motion to value Ally Bank's collateral.

REFINANCING

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). Creditor objects to the Plan under to § 1325(a)(6) but does not state a reason for the objection. Creditor's Obj., Doc. #67. Trustee contends that the Plan is too speculative in that Debtors' performance is conditioned upon Debtors' ability to refinance their home within 36 months to pay a minimum of \$60,000 into the Plan. Tr.'s Obj., Doc. #73. Trustee contends that Debtors have not shown either the ability or likelihood of the future refinance. Id.

In response, Debtors state that through internet research of similarly situated homes in their neighborhood, Debtors determined the fair market value of their home to be no less than \$450,000. Decl. of Robin Marshall, Doc. #76. With only one mortgage totaling \$275,000, Debtors estimate equity in the home to be at least \$175,000. Decl., Doc. #76. Debtors further state that they will be unable to obtain a refinance of their home until one year from the date of filing their chapter 13 bankruptcy petition. Decl., Doc. #76. Debtors expect the real estate market to remain strong during that time. Decl., Doc. #76.

The Plan provides that "[o]n or before month 36, Debtors shall obtain a refinance of their home for the maximum amount obtainable under market and qualification conditions. Debtors believe they can obtain, and therefore will

provide, a minimum \$60,000 prior to the end of month 36 of the term of the Plan." Section 7, Doc. #65.

Although a chapter 13 debtor may sometimes provide for the sale or refinance of the debtor's property to pay a claim, "bare assertions that [the debtors] will sell or refinance their residences at or near the end of their Chapter 13 plans, standing alone, plainly does not satisfy the feasibility requirement of § 1325(a)(6)." In re Hogue, 78 B.R. 867, 872 (Bankr. S.D. Ohio 1987); see In re Kincaid, 316 B.R. 735, 742 n.11 (Bankr. E.D. Cal. 2004). Whether the future refinance of Debtors' home renders the Plan unfeasible is a question of fact. In re Gavia, 24 B.R. 573, 574 (B.A.P. 9th Cir. 1982).

Here, Debtors' ability to make all Plan payments and comply with the Plan is contingent upon the future refinance of their home. The source of the promised payments is uncertain, and the Plan does not require the refinance to occur until the end of the third year of Debtors' five-year Plan. The evidence offered by Debtors is not sufficient to instill confidence that a refinance is likely to occur. Further, Debtors noted that lenders might be unwilling to work with Debtors until one year into their chapter 13 Plan. Decl., Doc. #76. This indicates that the refinance could not occur any earlier than 12 months from the petition date. The court cannot determine on the evidence currently before the court that Debtors will be able to satisfy § 1325(a)(6) under the terms of the Plan.

Accordingly, the motion to confirm the Plan will be continued to permit an evidentiary hearing to be held regarding the feasibility of the Plan based on the future refinancing.

PROJECTED DISPOSABLE INCOME CALCULATION

Upon the objection of the trustee or the holder of an allowed unsecured claim, 11 U.S.C. § 1325(b) requires the plan provide for all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Creditor objects pursuant to § 1325(b) asserting that the Plan fails to pay all of Debtors' disposable income as determined under § 1325(b)(3). Doc. #67.

Trustee objects pursuant to § 1325(b) and disputes expenses claimed by Debtors on Debtors' Form 122C-2. Doc. #51; Doc. #73. Trustee requests a copy of the Sunrun solar contract to verify if the claimed deduction is allowable. Doc. #73. Trustee also contends that Debtors have the burden of proof to establish the "special circumstances" expense claimed and Debtors have not carried their burden. Doc. #73.

Debtors responded that a copy of the Sunrun contract has been provided to Trustee. Reply, Doc. #75. Debtors also agree with Creditor's and Trustee's disputes to Form 122-C. Doc. #75. However, Debtors contend that the two dependent adults' residence in their home should be considered under household expenses. Id. Debtors will file an amended Form 122-C which Debtors contend will resolve the objections. Id.

Debtors have not filed an amended Form 122-C. It is unclear to the court whether the filing of the amended form will resolve all objections made by the Creditor and Trustee. At the hearing, the parties should be prepared to clarify whether an amending Form 122-C would resolve their respective objections.

UNREASONABLE DELAY

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Section 1307(c)(1) allows the court to convert a case to chapter 7 or dismiss a case for unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Creditor contends that the Plan imposes an unreasonable delay that is prejudicial to creditors. Doc. #67. Debtors respond that the availability of a discharge is not an issue of eligibility to file chapter 13 and so long as the Debtors are making their best efforts to pay on the claim during the term of the Plan, Debtors should be allowed to confirm a chapter 13 plan. Doc. #75.

The court finds that there has been no unreasonable delay by Debtors. To the extent Creditor seeks to move for the dismissal of Debtors' chapter 13 case pursuant to 11 U.S.C. § 1307(c), such request must be made by separate motion.

BAD FAITH

11 U.S.C. § 1325(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. Section 1325(a)(7) requires that the action of the debtor in filing the petition be in good faith. 11 U.S.C. § 1325(a)(3), (a)(7).

Creditor contends that the Plan fails to provide in any meaningful way for payment of Creditor's debt which cannot be discharged and that the Plan is essentially a "fee-only" plan. Doc. #67.

"Although not defined under the [Bankruptcy] Code, 'good faith' is generally interpreted to mean 'a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" In re Mann Farms, Inc., 917 F.2d 1210, 1214 (9th Cir. 1990). A finding of good faith "requires the court to consider the totality of the circumstances." Id. "A good faith test . . . should examine the intentions of the debtor and the legal effect of the confirmation of a Chapter 13 plan in light of the spirit and purposes of Chapter 13." In re Chinichian, 784 F.2d 1440, 1444 (9th Cir. 1986).

It is unclear if Debtors' Plan will be modified in light of the other objections, and the court is unable to determine Debtors' good faith at this time. Absent Debtors indicating that a new modified plan will be filed in light of the other objections to the Plan, the hearing on this motion will be continued so an evidentiary hearing may be held to establish Debtors' good faith.

CONCLUSION

Debtors, Trustee and Creditor should be prepared at the hearing to discuss scheduling a further hearing on the motion to confirm the Plan to resolve outstanding objections.

CONTINUED OBJECTION TO DISCHARGE BY MECHANICS BANK
3-17-2021 [\[27\]](#)

D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The Moving Party shall submit a proposed
order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). Opposition was presented at the hearing, and the hearing was continued to June 3, 2021 at 9:00 a.m. Doc. #58. This matter will proceed as scheduled.

Mechanics Bank, successor by merger to Rabobank, N.A. ("Creditor"), moved the court for an order determining that Danny Wayne Marshall and Robin Lynn Marshall (together, "Debtors") are ineligible for a chapter 13 discharge under 11 U.S.C. § 1328(f). Doc. #27. Debtors filed a chapter 7 case on June 8, 2018, and each received a discharge in that case on October 15, 2018. Exs. 2-3, Doc. #30.

At the first hearing, Debtors asserted that Debtors' stipulation to discharge of Creditor's claim in their chapter 7 case may not preclude a "super-discharge" in this chapter 13 case and requested additional time to brief the argument. The court continued the hearing and permitted Debtors to file additional pleadings no later than April 22, 2021. Order, Doc. #58. Debtors filed no additional papers related to this matter.

However, on April 22, 2021, Debtors moved to confirm a first modified plan that contains a provision stating that Debtors shall not receive a chapter 13 discharge. See Mot., Doc. #62; Modified Plan, Doc. #65.

Based on the first modified plan, it appears that Debtors have withdrawn their opposition to Creditor's objection to discharge. Accordingly, the objection to discharge will be SUSTAINED. Debtors are not entitled to a chapter 13 discharge in this case.

MOTION TO DISMISS CASE
5-6-2021 [\[18\]](#)

MICHAEL MEYER/MV
THOMAS MOORE/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue the order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Debtor is delinquent in the amount of \$1,870.00. Doc. #20. Before this hearing, another payment in that same amount will also come due. Id. Debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

Accordingly, this motion will be GRANTED. The case will be dismissed.

8. [21-10129](#)-A-13 **IN RE: JAVIER/DANIELLE DE OCHOA**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
3-12-2021 [[14](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

9. [21-10129](#)-A-13 **IN RE: JAVIER/DANIELLE DE OCHOA**
[RSW-1](#)

MOTION TO CONFIRM PLAN
4-22-2021 [[30](#)]

DANIELLE DE OCHOA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). On May 18, 2021, the Chapter 13 trustee ("Trustee") filed a limited opposition. Doc. #45. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

Javier De Ochoa and Danielle Nicole De Ochoa (together, "Debtors"), the chapter 13 debtors, move the court to confirm Debtors' first modified chapter 13 plan (the "Plan"). Doc. #30. Trustee objects to confirmation of the Plan because Plan payments are delinquent \$5,900.00 through April 2021. Tr.'s Obj., Doc. #45. The Plan calls for monthly payments of \$5,900.00. Plan, Doc. #34. Debtors have not responded to Trustee's objection.

Trustee also has filed a motion to dismiss Debtors' bankruptcy case for unreasonable delay and for failure to make all payments due under the plan. See Doc. #14 (MHM-1). The hearing on Trustee's motion to dismiss was continued to be heard in conjunction with this motion to confirm the Plan. Order, Doc. #37. Trustee has not withdrawn the motion to dismiss.

This matter will proceed as scheduled to determine whether Debtors are current with their monthly plan payments. If Debtors are current on their monthly plan payments, the court is inclined to grant the motion to confirm the Plan.

However, if Debtors are not current on monthly plan payments, the court will deny the motion to confirm the Plan. If the Plan is not confirmed, it is likely that Trustee's motion to dismiss (MHM-1), matter no. 8, above, will be granted.

10. [21-10838](#)-A-13 **IN RE: STEPHEN/VALERIE COOKE**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WATERFALL VICTORIA
GRANTOR TRUST II, SERIES G
5-18-2021 [\[14\]](#)

WATERFALL VICTORIA GRANTOR TRUST II, SERIES G/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The Moving Party shall submit a proposed
order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtors filed their chapter 13 plan ("Plan") on April 3, 2021. Doc. #4. Waterfall Victoria Grantor Trust II, Series G ("Creditor"), as serviced by Specialized Loan Servicing, LLC, objects to confirmation of the Plan under 11 U.S.C. § 1322(b)(2). Doc. #14.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on April 22, 2021. Claim 3.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #4. Section 1322(b)(2) of the Bankruptcy Code states the general rule prohibiting a chapter 13 plan from modifying the rights of holders of secured claims whose claims are "secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2). However, under § 1322(c)(2), a security interest in a debtor's principal residence can be modified if the claim matured pre-petition or will mature during the life of the plan. In re Varner, 530 B.R. 621, 622 (Bankr. M.D.N.C. 2015); 11 U.S.C. § 1322(c)(2). Creditor's proof of claim shows that Creditor's secured claim is secured only by the debtor's principal residence. Claim 3. Creditor's proof of claim also shows that the note matures in 2036. Claim 3. The debtors have not responded to the objection.

The Plan categorizes Creditor's claim in Class 2(A), which includes secured claims that are modified by the plan, and seeks to pay interest on Creditor's claim at a reduced rate of 4% instead of the contract rate of 11.65%. Plan, Doc. #4. It appears that the Plan seeks to impermissibly modify Creditor's secured claim in violation of 11 U.S.C. § 1322(b)(2), and the debtors' proposed chapter 13 plan cannot be confirmed. Claim 3; Doc. #4. Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

11. [20-12867](#)-A-13 **IN RE: ULF JENSEN AND BARBARA KIRKEGAARD-JENSEN**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
5-13-2021 [\[75\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Patrick Kavanagh ("Movant"), counsel for the Chapter 13 debtors, requests allowance of interim compensation for services rendered June 22, 2020 through April 25, 2021. Doc. #75. The debtors' confirmed plan provides for attorney's fees of \$12,390.00 to be paid through the plan, subject to prior court approval. Doc. #50. Movant received a retainer of \$1,610.00 and requests compensation of \$9,390.00 paid through the plan. Doc. #77. Movant is not requesting reimbursement for expenses.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a Chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant's services in the relevant period included, without limitation: (1) pre-petition consultation and fact gathering; (2) preparing and filing the petition, schedules, and forms; (3) hearings on confirmation and motion to dismiss; (4) preparing and filing amended plan; and (4) case administration. Doc. #77. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$9,390.00 to be paid in a manner consistent with the terms of the confirmed plan.

12. [17-10375](#)-A-13 **IN RE: RANDALL/TAMMY REYNOLDS**
[SJS-5](#)

MOTION FOR COMPENSATION FOR SUSAN J SALEHI, DEBTORS ATTORNEY(S)
5-7-2021 [\[71\]](#)

SUSAN SALEHI/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Susan J. Salehi ("Movant"), counsel for Randall Reynolds and Tammy Reynolds ("Debtors"), the debtors in this chapter 13 case, requests allowance of additional fees pursuant to LBR 2016-1(c). Doc. #71. The court previously awarded attorney's fees of \$2,000, and the confirmed plan authorizes additional fees of \$3,500 to be paid through the plan subject to prior court approval pursuant to LBR 2016-1(c). Doc. ##52, 53. Movant requests additional fees of \$3,500.00 to be paid through the chapter 13 plan. Doc. #71. Debtors believe the requested compensation is reasonable and should be paid. Doc. #71.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) moving to modify the plan, which was granted; and (2) filing two separate motions to incur debt, both of which were granted. Doc. ##71, 73. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows compensation in the amount of \$3,500.00 to be paid in a manner consistent with the terms of the confirmed plan. Movant may seek additional compensation only if warranted under LBR 2016-1(c)(3).

1. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[LNH-5](#)

MOTION FOR ADMINISTRATIVE EXPENSES
5-4-2021 [\[89\]](#)

PETER FEAR/MV
SCOTT LYONS/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Lane Arnold Anderson ("Debtor"), moves the court for an order authorizing the payment of \$185.00, plus fees or penalties if assessed, to the Franchise Tax Board as an administrative tax expense and for authorization to pay an additional amount up to \$1,000.00 for any unexpected tax liabilities without further court approval. Doc. ##89, 91.

11 U.S.C. § 503(b)(1)(B) states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that the tax was incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8). Doc. #91.

Accordingly, this motion is GRANTED. Trustee is authorized to pay \$185.00, plus fees or penalties if assessed, in state income tax, plus an additional amount not to exceed \$1,000 for any unexpected tax liability incurred by the estate and not for a tax of a kind specified in § 507(a)(8).

MOTION TO AVOID LIEN OF FRANCISCO JAVIER AVALOS
4-27-2021 [\[178\]](#)

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
NON-OPPOSITION

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Creditor Francisco Javier Avalos submitted written non-opposition to the motion. Doc. #185. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Sergio Andrade ("Debtor"), the chapter 7 debtor, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to partially avoid the judicial lien of Francisco Javier Avalos ("Creditor") on Debtor's residential real property commonly referred to as 3401 Beyers St., Bakersfield, CA 93312 (the "Property"). Doc. #178; Am. Schedule C, Doc. #49. Debtor filed this bankruptcy case on April 8, 2020. Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under section 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

A judgment was entered against Sergio Andrade in the amount of \$185,407.43 in favor of Creditor on June 11, 2018. Ex. 4, Doc. #181. The abstract of judgment was recorded pre-petition in Kern County on August 9, 2018. Ex. 4, Doc. #181. The lien attached to Debtor's interest in the Property located in Kern County. Doc. #180. The Property also is encumbered by a lien in favor of Select Portfolio Servicing, Inc. in the amount \$109,024.33. Claim 5; Decl. of Debtor, Doc. #180. Debtor claimed an exemption of \$20,946.69 in the Property under

California Code of Civil Procedure § 703.140(b)(5). Am. Schedule C, Doc. #49. Although Debtor's declaration filed in support of this motion states that the Property is worth \$180,000.00, Debtor's amended Schedule A/B and the motion assert a market value for the Property as of the petition date at \$195,000.00. Am. Schedule A/B, Doc. #162. The court will use the market value for the Property as of the petition date at \$195,000.00 as stated in Debtor's amended Schedule A/B rather than the \$180,000 value stated in Debtor's declaration because the motion seeks to limit the amount of Creditor's lien to \$65,028.98, and that calculation is consistent with a market value of \$195,000, not \$180,000. Moreover, Creditor filed his non-opposition to Debtor's request in the motion to limit Creditor's lien on the Property to \$65,028.98. Doc. #185.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$185,407.43
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$109,024.33
Amount of Debtors' claim of exemption in the Property	+	\$20,946.69
	sum	\$315,378.45
Value of Debtors' interest in the Property absent liens	-	\$195,000.00
Amount Creditor's lien impairs Debtors' exemption	=	\$120,378.45
Amount of Creditor's lien that is not avoided		\$65,028.98

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien in its entirety. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be reduced.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. Creditor Francisco Javier Avalos's judicial lien is limited to \$65,028.98.

3. [21-10757](#)-A-7 **IN RE: JOSE/ANGELICA TORRES**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-20-2021 [[12](#)]

JPMORGAN CHASE BANK, N.A./MV
D. GARDNER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, JPMorgan Chase Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2014 Land Rover Range Rover ("Vehicle"). Doc. #12.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least five complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$4,794.32. Doc. #15.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$31,900.00 and the debtors owe \$34,178.96. Doc. #15. Prior to the filing of this bankruptcy case, Movant took possession of the Vehicle. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least five pre-petition payments to Movant and the Vehicle is a depreciating asset.

10:30 AM

1. [21-10445](#)-A-11 **IN RE: HARDEEP KAUR**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
2-23-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [19-13729](#)-A-7 **IN RE: MICHELLE PAUL**
[19-1130](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-2-2019 [[1](#)]

LOS ANGELES FEDERAL CREDIT UNION V. PAUL
ALANA ANAYA/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to September 9, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement filed on May 20, 2021, the status conference will be continued to September 9, 2021, at 11:00 a.m. Doc. #38.

The parties shall file either joint or unilateral status report(s) not later than September 2, 2021.

2. [20-13641](#)-A-7 **IN RE: MATTHEW/ERIN BACHARA**
[21-1008](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-25-2021 [[1](#)]

BACHARA ET AL V. ALTA ONE FEDERAL CREDIT UNION
NICHOLAS WAJDA/ATTY. FOR PL.

NO RULING.

1. [21-10304](#)-A-7 **IN RE: ALFONSO GODOY**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
5-10-2021 [\[11\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the debtor's attorney.